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CHARLES ELMORE CRO

In the Supreme Court of the United States

October Term 1946

No. ~~12~~ 6 Original

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF CALIFORNIA,
Defendant.

MOTION FOR LEAVE TO FILE PETITION AND PETITION FOR REHEARING AND RECONSIDERATION OF MAJORITY OPINION

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UNITED STATES OF AMERICA,
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STATE OF CALIFORNIA,
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MOTION FOR LEAVE TO FILE PETITION AND PETITION FOR REHEARING AND RECONSIDERATION OF MAJORITY OPINION

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of California respectfully requests leave to file this Petition and hereby petitions the Court for a rehearing and reconsideration of the majority opinion in this original proceeding.

Summary of Grounds for Petition.

The following is a summary of the grounds of this Petition for a Rehearing and Reconsideration of the Majority Opinion:

A. The majority opinion appears to hold that the existence of "national power" in and of itself has conferred upon the Federal Government rights equivalent to a proprietary interest in the lands and resources involved in this case. The majority finds no other basis for holding

that the Federal Government may "appropriate" this property for its own use.

The Constitution was designed to effect an adjustment and distribution of governmental powers and property rights between States and Federal Government. Under that distribution and adjustment broad governmental powers were granted to the Federal Government but, as this Court has frequently held, these powers did not carry with them any property rights or proprietary interests in lands within the boundaries of the States. The majority opinion, if allowed to stand, will (1) change and unbalance the entire constitutional relationship between the several States and the Federal Government and (2) seriously confuse, if not obliterate, the legal distinction between governmental powers and proprietary rights in property, a distinction the maintenance of which is essential to the stability of property rights of every nature.

A case of this type, involving basic questions of constitutional law, extensive property rights, and the long historical development of those rights as between governmental bodies, if tried in the usual way before a trial court, would reasonably have consumed many weeks of time in the sifting of factual, historic and legal data and in the presentation of legal argument. Specific findings of fact and conclusions of law would have been made as to all relevant issues before the case ever reached this Court. The fact that the Government chose to submit a cause of this magnitude upon a summary motion directed to the sufficiency of a responsive pleading, has de-

prived the Court of those benefits. The result is that a fundamental change in the foundations of our Federal system is being made by the majority opinion without a more detailed or exhaustive consideration of the many complex issues of law and fact involved than has been possible on the basis of the briefs submitted and three hours of oral argument.

The fact that this case has been so presented and decided, has, in our opinion, and with all respect to the Court, caused the Court to minimize the effect of a great many important factual and historical matters which would normally have been presented in detail to a trial court. For example, the Court's statement [Op. pp. 16-17]: "The question of who owned the bed of the sea only became of great potential importance at the beginning of this century when oil was discovered there," seems to us hardly in accord with the historical facts. The question of the ownership of the three-mile belt was of sufficient importance that it was the subject of numerous statutes in every coastal State long before oil was discovered. These statutes dealt with a great many important natural resources other than oil, and in all coastal States the ownership of the three-mile belt has always been considered of the greatest importance. The numerous State court decisions, particularly in the original States (which the majority apparently ignores), fully bear out what we say.

The great mass of legal material that was submitted for consideration by the Court in the brief time available, has,

in our opinion, caused the Court to overlook at least six established principles of law, each one of which, if given due consideration and application to the issues involved herein, would require a reversal of the majority opinion.

The propositions of law thus overlooked are the following:

1. The rule established by prior decisions of this Court holding that the Constitutional grants to the National Government of various governmental powers, including the power over external affairs, do not carry with them any cession of territory and do not necessitate the ownership of, or dominion (in a proprietary sense) over, any property within any State.

2. This Court's prior rejection, in an opinion by Mr. Justice Holmes, of the very same contention, now accepted as the main basis of the majority opinion herein, that ownership by the National Government of the beds of international waters was a necessary corollary of the National Government's full power over external affairs.

3. The rule established by prior decisions of this Court holding that territory may not be annexed to the United States or acquired by the National Government by action of the Executive Department but only by Congressional action.

(a) The only declaration the State Department has ever made upon the issue of Federal and State ownership of submerged lands under the three-mile belt is directly opposed to the majority opinion in this case.

4. The rule established by prior decisions (100 years old or more) declaring and holding that the original thirteen states, and not the National Government, own the marginal belt along their coasts.

5. The principle established by prior decisions of this Court holding that a rule of property law established either by repeated dictum or decisions, on the faith of which innumerable titles have vested, should not be rejected, no matter what may be the views of the present Court.

6. Prescription and acquiescence: The majority opinion, in its treatment of the subjects of prescription and acquiescence, has deprived the State of its sovereignty and relegated it to the position of a private individual.

(a) Title to the entire 3,000 square miles is vested in the State of California under the doctrine of prescription, as all this area has been officially claimed by California since 1849 and over 10% of the area has been actually occupied, used, granted or leased by the State; and by the doctrine of constructive possession, the entire area is deemed in law to be possessed; or

(b) In the alternative, and at the very least, title is vested in California as to those portions of the submerged lands (approximately 350 square miles) which have been actually granted, leased, occupied or improved through the State or its grantees, lessees or contractors; and this would include all areas upon which improvements have been made.

B. A still further ground for this petition is that the alleged distinction between the ownership or paramount dominion over inland waters on the one hand and the marginal sea on the other hand, has no constitutional, statutory or factual basis; is contrary to all prior decisions of this Court; and is created for the first time in history by the majority opinion herein.

The gratuitous assertion in footnote 1 of the majority opinion to the effect that there is an area off the California coast approximately 1,000 miles long and .45 of a mile wide, amounting to 450 square miles, that is a part of the United States but not included within any State or territory thereof, is not relevant to any issue herein and is, therefore, sheer *obiter dictum.* Moreover, it is contrary to well known facts of general common knowledge, of which courts are expected to take judicial notice, namely: that in 1849, as at present, the word "mile" had two diverse meanings, both in England and in the United States. In both countries, when used as a unit of measurement over land, it meant 5,280 feet,[1] and when used as a unit of measurement over water, it meant 6,080 feet.[1] The fact is that California's western boundary is three nautical miles from its coast, as has been declared by the California Supreme Court,[2] which is believed to be the paramount authority as to the meaning of words used in its constitution and statutes. This matter was called to the Court's attention in State's brief, p. 148, n. 161.

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[1]Disregarding negligible fractions.

[2]*Ocean Industries, Inc. v. Superior Court,* 200 Cal. 235, 245.

ARGUMENT.

I.

The Constitutional Grants to the National Government of Governmental Powers, Including the Power Over External Affairs, Do Not Carry With Them Any Cession of Territory, and Do Not Necessitate the Ownership of, or Dominion (in a Proprietary Sense) Over, Property Within a State.

It is a basic proposition of constitutional law that grants of power in the Federal Constitution carried with them no cession of territory. This proposition is, we submit, controlling in the present case. Obviously, if there was no cession of territory by the States to the Federal Government, there was no cession of any proprietary interests in land or in the products of the soil. And if there was no cession of any interests in land or in the products of the soil, *a fortiori* the Federal Government could not acquire property rights or interests in land within a State by the mere existence or even by the exercise of its granted powers. Yet the majority opinion is predicated on the theory that the Federal Government may, solely by virtue of its powers over external affairs, "appropriate" to its own use the real and personal property "in the seas next to its shores" and within the States' boundaries. Such a theory, if allowed to become law, will (1) obliterate the constitutional distinction between governmental powers and proprietary rights in land, and (2) nullify the constitutional principle that the grant of powers to the Federal Government carries with it no cession or transfer of property rights, a principle which has been settled since the decision in 1818 of *United States v. Bev-*

ans, 3 Wheat. 386, where Chief Justice Marshall said (p. 388):

> "Can the cession of all cases of admiralty and maritime jurisdiction be construed into a cession of the waters in which those cases may arise? This is a question on which the Court is incapable of feeling a doubt. The article which describes the jurisdictional power of the United States *is not intended for the cession of territory,** or of general jurisdiction. It is obviously designed for other purposes. It is in the 8th section of the 2d article,[3] *we are to look for cessions of territory* and of exclusive jurisdiction. . . . It is observable that the power of exclusive legislation (which is jurisdiction) is united with *cession of territory, which is to be the free act of the states.*"

In *Corfield v. Coryell* (C. C. N. J. 1823), 6 Fed. Cas. No. 3,230, page 546, Mr. Justice Washington sitting on Circuit, said (p. 551):

> "The grant to Congress to regulate commerce on the navigable waters belonging to the several states, renders those waters the public property of the United States for all the purposes of navigation and commercial intercourse; subject only to Congressional regulation. *But this grant contains no cession, either express or implied, of territory, or of public or private property.*"[4]

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*Italics added here and elsewhere in this Petition unless otherwise noted.

[3]The reference to the 2d article is obviously a textual error. The article referred to is the 1st article.

[4]Followed with approval by this Court on several occasions: *Smith v. Maryland* (1855), 18 How. 71, 74; *Manchester v. Massachusetts* (1891), 139 U. S. 240, 262.

In *Rhode Island v. Massachusetts* (1838), 12 Peters 657, 733, this Court said:

> "It follows, that when a place is within the boundary, it is a part of the territory of a state; title, jurisdiction and sovereignty are inseparable incidents, and remain so, *till the state makes some cession.* The plain language of this Court in the *United States v. Bevans,* 3 Wheat. 386 *et seq.,* saves the necessity of any reasoning on this subject . . . Title, jurisdiction, sovereignty, are, therefore, dependent questions, necessarily settled when boundary is ascertained . . ."

This is further buttressed by the crystal-clear provisions of Article IX of the Articles of Confederation which specifically provided that:

> "No state shall be deprived of territory for the benefit of the United States."

This was carried into the Tenth Amendment of our Constitution. (For full discussion of this entire subject, see State's Brief, pp. 41-65.)

It is impossible for us to understand how, in the face of these past decisions holding that Constitutional grants of governmental powers are unaccompanied by any cession of territory within a State, the majority opinion can rightfully conclude that the power of the National Government over external affairs or under international law takes with it paramount "dominion," in a proprietary sense, over the resources of a portion of the territory within the State boundary, to wit, the marginal belt.

The Federal Government, of course, has plenary power to conduct our international affairs and it is its duty to maintain an Army and Navy and to defend the States

from invasion. It is also true that the Federal Government may make international treaties involving the subject of oil as well as many other subjects, as it has frequently done. But this power does not authorize the Federal Government to "appropriate" the subject matter of such treaties to its own use.

And yet the majority opinion (p. 13), says:

> ". . . And in so far as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally *be appropriated for its use.*"

This statement is the heart of the Court's decision in this case. With all due respect, it is a plain *non sequitur* and is predicated on a misconception of the powers of the Federal Government in relation to the States and to foreign nations.

The rights of the United States under international law are rights as against other nations and have no bearing as to the distribution of property rights or interests as between States and the National Government. It is impossible, under any hitherto recognized principle of constitutional law, that the National Government has the right to acquire dominion (in a proprietary sense) or ownership over property wholly within the boundaries of a State by reason of any doctrine of international law. International law is concerned only with the rights and duties of the United States as against other nations and cannot control the domestic rights of a State to property within its boundaries. This has been a fundamental principle of

both constitutional law and real property law from the beginning of our history.

In *Johnson v. McIntosh* (1823), 8 Wheat. 543, 572, Chief Justice Marshall said:

> ". . . title to lands, especially, is, and must be, admitted, to depend entirely *on the law of the nation in which they lie.*"

In *Skiriotes v. Florida* (1941), 313 U. S. 69, 72-73, Chief Justice Hughes said:

> ". . . International law is a part of our law and as such is the law of all States of the Union . . ., but it is a part of our law *for the application of its own principles,* and these are concerned with international rights and duties *and not with domestic rights and duties.*"

If the National Government needs real or personal property in order to carry out its functions, it must acquire that property in a constitutional manner. If the need of the National Government for oil in order to perform its constitutional powers is to determine the question of ownership or the right to "appropriate" such oil for its own use, then a similar need for coal, iron, uranium, food or any other commodity will *ipso facto* vest in the Federal Government the right to take such property without payment of just compensation.

We respectfully submit that this basis of the majority opinion is directly contrary to established constitutional principles governing the distribution of property rights between States and Federal Government.

II.

This Court Has Heretofore Squarely Rejected, in an Opinion of Mr. Justice Holmes, the Very Same Contention That Ownership by the National Government of the Beds of International Waters Is a Necessary Corollary of the National Government's Full Power Over External Affairs.

The majority opinion fails to recognize the unanimous decision of this Court rendered in 1908, written by Mr. Justice Holmes. The Solicitor General in that case made exactly the same contention as that made in this case and accepted as the main basis of the opinion of the majority herein, namely that under international law, by reason of its powers over external affairs, the Federal Government must be the owner of the beds of international waters. The Court rejected that contention. That case is, we respectfully submit, controlling here and requires a reversal of the majority opinion. The case adverted to is *United States v. Chandler-Dunbar Co.* (1908), 209 U. S. 447. It involved title, as between the United States and the grantee from the State of Michigan, to the bed of navigable waters connecting the Great Lakes. These navigable waters constitute an *international boundary* between Canada and the United States. The Solicitor General argued in that case (209 U. S. 448, Footnote 1) that there was

> "The distinction between the inland waters of a State and international waters; . . ."

In its brief filed with this Court, the National Government contended in the *Chandler-Dunbar* case, through its Solicitor General (p. 109) that:

> ". . . the waters of the interior of a state concern only the state and its citizens, while waters on

the boundary of a border state, adjacent to another nation, concern the whole body of states. Both by the law of nations and by such treaties as the Nation may enter into with such foreign country, it becomes absolutely necessary that, as to such waters, the control should be vested in the Nation and not in the state."

And the Solicitor General further argued there that:

"The international character of the waters of the Great Lakes was one of the elements considered by this Court *in deciding that such lakes are high seas. United States v. Rogers,* 150 U. S. 266."

Mr. Justice Holmes, for a unanimous Court in the *Chandler-Dunbar* case, rejected the contention *in toto,* holding that the lands under the navigable waters there involved belong to the State of Michigan, merely saying (p. 452):

"We see no plausible ground for the claim of the United States."

The same contention was made in the Circuit Court of Appeals in the *Chandler-Dunbar* case, but that court likewise rejected it (152 Fed. 39), saying:

"In behalf of the complainant it is contended that there is a difference between the land in the bed of the inland rivers of a state and those on its boundary, especially where the boundary is an international boundary; but no substantial ground for such a distinction has been suggested, nor can we find any."

The beds of the Great Lakes, constituting an international boundary between Canada and the United States, presented a far stronger case for ownership in the National Government, in the *Chandler-Dunbar* case, than the plaintiff herein presents in its claim of ownership of the three-mile belt where no foreign nation owns the sea for thousands of miles outside the three-mile belt. If rights within the three-mile belt are to be based on the position of the National Sovereign in international affairs, and under international law, the National Government would logically have had to own not only the St. Mary's River, but the American half of the Great Lakes. But this Court summarily rejected the Government's contention for a distinction between inland waters and international boundary waters in the *Chandler-Dunbar* case. Likewise, this Court has repeatedly held that the States of New York, Illinois, and other Great Lakes States own the beds of the Great Lakes up to the international boundary line with Canada. (*Massachusetts v. New York* (1926), 271 U. S. 65; *Illinois Central Railroad Company v. Illinois* (1892), 146 U. S. 387.)

It is wholly unreasonable, we respectfully submit, to predicate title to the three-mile belt along the California coast upon the National Government's position in international law and "the necessity that a government next to the sea must be able to protect itself from dangers incident to its location" (Opinion p. 13), where other nations adjoining that sea are thousands of miles away, while at the same time this Court has uniformly held for decades that there is no such need for the National Government to

own the beds under navigable waters of the Great Lakes, which immediately adjoin another nation. It must not be overlooked that great naval battles have been fought upon the Great Lakes themselves in the early history of our Nation. Yet no one believed that this circumstance resulted in ownership by the Nation rather than by the bordering State. It is worthy of mention, simply by way of illustration, that the Chief of Staff of the United States Army, General Dwight D. Eisenhower, issued a statement on June 25, 1947, calling for United States-Canadian arms standardization and stating that:

> "in another war the first attack probably would be aimed at the Great Lakes and St. Lawrence River industrial areas."[5]

We urge that there is no possible distinction in law or in reason between the *Chandler-Dunbar* international boundary case and the issue in the instant case and that that case requires a reversal of the decision herein.

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[5]United Press release, Washington, D. C., June 25, 1947, Los Angeles Daily News, June 25, 1947.

III.

Territory May Not Be Annexed to the United States or Acquired by the National Government by Action of the Executive Department but Only by Congressional Action.

The majority opinion contains the assertion that "acquisition" of the three-mile belt has been "accomplished by the National Government" as a result of the establishment of the three-mile limit, through long recognition thereof by the State Department. (Opinion p. 13.) However, it is conceded that there has been no action of Congress looking toward the acquisition for the National Government of this three-mile belt, all lying within the territorial boundaries of California and of the other coastal States.

This assertion in the majority opinion ignores the Constitutional rule that in order for the United States to acquire the ownership of territory, Congress must take affirmative action. The act of the Executive Department alone is ineffectual to accomplish either the annexation or the acquisition of territory. This is the necessary result of Article IV, Section 3, of the Constitution, granting to Congress the power

> "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." (*Dorr v. United States* (1904), 195 U. S. 138, 140.)

This Court, through Chief Justice Taney, said (*Fleming v. Page* (1850), 9 How. 603, 615), that:

> "The United States, it is true, may extend its boundaries by conquest or treaty, and may demand the cession of territory as the condition of peace . . . *but this can be done only by the treaty-making power*

or the legislative authority, and is not a part of the power conferred upon the President by the declaration of war."[6]

Since Congress has not acted, it is apparent that recognition by the State Department of the three-mile limit in international law is completely immaterial and ineffectual constitutionally to result in the acquisition of, or dominion (in the proprietary sense) over, this territory for the National Government.

Furthermore, the Court's interpretation of the acts of the State Department ignores the admitted history that the "cannon-shot" rule was well established in international law long prior to 1789 and was given recognition in this country prior to the formation of the National Government. (State's Br. pp. 174-185.) The three-mile rule was an outgrowth of the cannon-shot rule and was a mere definition and limitation *of the extent* of the adjoining marginal sea and not an appropriation or annexation of territory or property rights.

When the State Department undertook the responsibility, as against other nations, of maintaining the integrity of the three-mile belt of marginal sea, it was merely performing the normal duties with which the Federal Government is charged by the Constitution. In the performance of these duties the State Department never had any thought of acquiring proprietary ownership of the marginal sea or of the resources of its subsoil for the Federal Government. Its activities never veered in that direction.

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[6]To the same effect: *Balzac v. Puerto Rico* (1922), 258 U. S. 298, 309; *Dorr v. United States* (1904), 195 U. S. 138; *United States v. Arredondo* (1832), 6 Pet. 691, 711; *Foster v. Neilson* (1829), 2 Pet. 253, 309. State's Brief, page 188.

When President Truman declared in 1945 that "the United States regards the natural resources of the subsoil and sea bed of the continental shelf . . . as appertaining to the United States, subject to its jurisdiction and control," he made it clear that this declaration was effective only as against other nations. It did not attempt to vest any proprietary interests in the Federal Government as against the States. This was specifically stated in the accompanying Executive Order wherein it was said:

> "Neither this Order nor the aforesaid proclamation shall be deemed to affect the determination by legislation or judicial decree of any issues between the United States and the several states, relating to the ownership or control of the subsoil and sea bed of the continental shelf within or outside of the three mile limit."[7]

This was a clear and explicit recognition by the President of the United States of the inability of the Executive Department, without Congressional action, to acquire proprietary ownership of territory. If an executive proclamation dealing specifically with the sea bed and its resources is not considered as vesting proprietary rights in the Federal Government as against the States, surely the acts of the State Department declaring to other nations that the United States will protect the three mile belt could not create a proprietary interest in land as against the States.

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[7]Executive Order 9633, dated September 28, 1945 (10 F. R. 12305). The above was omitted from the Government's quotation from the Executive Order in the Government's Opening Brief, p. 43.

Yet the Court has held that as a result of the performance of these acts the State Department has acquired for the Federal Government, as against the States, valuable property rights which the Federal Government would not otherwise have had.

We respectfully submit that this holding vitiates our constitutional distribution of powers and rights between the Nation and the States, as was made perfectly clear in Article I, Section 8, Clause 17 and in the Tenth Amendment of the Constitution, in Article IX of the Articles of Confederation and in the case of *United States v. Bevans, supra,* and the multitude of cases which have followed that case.

To hold, as the Court has done, that by the conduct of external affairs the Federal Government can deprive the States of their long recognized ownership of the beds of the marginal seas and can, in consequence, gain property rights for itself, is to attack the very foundations of our whole Federal system.

The Only Declaration the State Department Has Ever Made Upon the Issue of Federal and State Ownership of Submerged Lands Under the Three-Mile Belt Is Directly Opposed to the Majority Opinion in This Case.

In view of the fact that the majority opinion is based in part upon the action of the State Department, we feel it is important to call the Court's attention to the position recently taken by the State Department in relation to the precise issue here before the Court. That position was taken in connection with House Joint Resolution 225, which provided for the quitclaiming by the Federal Government of all submerged lands to the respective States.

While this resolution was under consideration by the Judiciary Committees of the Senate and the House, the Chairman of the Senate Judiciary Committee wrote letters to several of the Departments of the Federal Government, asking them to advise the Congress specifically as to the position of these Departments with respect to the proposed quitclaim. One of these letters was addressed to the Department of State and, upon May 26, 1945, that Department replied in a letter signed by Acting Secretary James G. Grew, addressed to the Chairman of the Judiciary Committee of the Senate, stating the position of the State Department as follows:

> "As this matter appears to relate primarily to a domestic question of the respective extent of State and Federal rights, and does not appear to any large extent to fall within the purv*ue* of the activities of this Department, I suggest that other agencies of the Government (for example the Department of Justice and the Treasury Department) are in a better position to furnish helpful suggestions with respect to the joint resolution."[8]

The decision of the Court in the present case is based on the position of the National Government in external affairs. It is of the utmost significance that the agency of the Government directly charged with administering

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[8]Joint Hearings Before the Committee on the Judiciary, House of Representatives and a Special Subcommittee of the Senate Judiciary Committee, 79th Congress, First Session, June 18, 19 and 20, 1945, pages 7, 20.

our external affairs has declared officially to Congress that the issue presented to this Court is one of domestic concern, not involving any question of external affairs. This official communication was addressed to Congress in respect to proposed legislation pending before it, and the position of the State Department reflected therein is obviously at complete variance with the majority opinion herein.

We respectfully submit that there is absolutely nothing in the record before the Court or elsewhere to justify the conclusion that dominion, in a proprietary sense, over the resources of the subsoil of the marginal sea is necessary to the performance by the Federal Government of its constitutional duties in relation to external affairs.

The Court appears to rely upon the proposition that the acts of the State Department in 1793 in recognizing the three-mile limit are binding upon it. On this point the Court says:

> "this assertion of national dominion over the three-mile belt is binding upon this Court." (Op. p. 12.)

We have already shown that the acts of the State Department referred to had no relation whatever to the question of proprietary rights as between States and Federal Government and, hence, could not control the issues in the present case. However, we believe the Court's theory that the acts of the State Department are binding upon this Court in the present case is erroneous in a far more fundamental sense. When the Court states that the assertion

of national dominion is binding upon it, this statement is, with all respect, correct only in the sense that the policy adopted by the National Government *as against other nations* is binding on this Court in any case where that policy is in issue. If the unilateral assertion by Federal officials of a right to appropriate property within the boundary of a State is binding upon this Court, then, indeed, the States are wholly without hope of judicial protection from encroachments of the Federal Government.

The Supreme Court of the United States is the court of the States as well as of the Nation[9] and it is the only tribunal to which the States can look for protection against encroachments upon State property by the Federal Government. If the Court is to consider itself bound by the assertions of Federal officials, then the Court has, in effect, abdicated its function as impartial arbiter between States and Federal Government, and the Executive Department becomes the final arbiter in a dispute such as this.

Furthermore, if the Court deems itself bound by the acts of the State Department, it should, we submit, give effect to the action of that Department in 1945, *when it dealt with the precise question here at issue,* rather than the action taken in 1793, which had nothing whatever to do with the distribution of property rights as between States and Federal Government.

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[9]*Florida v. Georgia* (1854), 17 How. 478.

IV.

Decisions of 100 Years or More Standing Declare and Hold That the Original Thirteen States and Not the National Government Own the Marginal Belt Along Their Coasts.

The majority opinion asserts (p. 10) that:

> ". . . we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it, even if they did acquire elements of the sovereignty of the English Crown by their revolution against it."

Again the majority opinion states (p. 11) that:

> "There is no substantial support in history for the idea that they [the thirteen colonies] wanted or claimed a right to block off the ocean's bottom for private ownership and use in the extraction of its wealth."

We respectfully submit that the majority opinion has failed to consider and has disregarded a line of decisions which have stood for over 100 years, that the original thirteen Colonies and States did own, and that the National Government did not own, the adjacent or marginal sea along their respective coasts. These decisions were rendered both by this Court and by the highest State courts in opinions written by some of the outstanding jurists of this country.

Chief Justice Lemuel Shaw of the Massachusetts Supreme Judicial Court said, in 1851, that:

> ". . . all the rights *to the sea* and sea shores, with the incidental rights of fishing, were granted to the colonies . . . all the rights, *both to the soil under the sea, as far as by the law of nations,*

> *one government is conceded to hold an exclusive right to the sea coasts* and other shore and arms of the sea, where the sea ebbs and flows, *did vest in the grantees under those charters.* Whatever right or jurisdiction, if any, remained in the Crown after those grants, it is clear that they ceased on the establishment of independence, *and has remained absolute in the States."* (*Weston v. Sampson* (1851), 62 Mass. (8 Cush.) 346, 351, 353.)

In 1855, Chief Justice Shaw of the Massachusetts Supreme Judicial Court, in *Dunham v. Lamphere,* 69 Mass. (3 Gray) 268, 269, 271-272,[10] said (p. 269):

> *"Being within a mile of the shore puts it beyond doubt that it was within the territorial limits of the state,* although there might in many cases be some difficulty in ascertaining precisely where that limit is. We suppose the rule to be, *that these limits extend a marine league, or three geographical miles, from the shore, . . ."*

Chief Justice Shaw then considered the question whether (pp. 271-272):

> ". . . the right both of *property and dominion over the sea-shore, within the territorial limits* of a sovereign state, and all its incidents—navigation, fishing and all other incidental benefits— . . . *belong properly to the general government, or remain with the state government."*

Chief Justice Shaw answered this question (p. 272), saying:

> ". . . the dominion and controlling power over the sea-coasts, its shores and tide waters, thus abso-

---

[10]Expressly followed with approval in *Commonwealth v. Manchester* (1890), 152 Mass. 230; and *Manchester v. Massachusetts* (1891), 139 U. S. 240.

lutely renounced and relinquished by the government of Great Britain, and which must vest somewhere, did, as between the United States and the several states respectively, *fully and absolutely vest in the several states.* This has been definitely settled by the Supreme Court of the United States. (Citing *Pollard v. Hagan.*)"

Again, the Supreme Judicial Court of Massachusetts, in a unanimous decision written by Chief Justice Field and concurred in by Mr. Justice Holmes, made the following unequivocal declaration:

> *"There is no belt of land under the sea adjacent to the coast which is the property of the United States and not the property of the States."* (*Commonwealth v. Manchester* (1890), 152 Mass. 230.)

This rule, announced in many other decisions,[11] has stood as the law of the land for over 100 years until the majority opinion was filed herein.

Since one of the major premises of the majority opinion is that the original thirteen Colonies or States did not own the adjacent marginal sea along their respective coasts, it is at once apparent that when this deeply embedded rule of law announced by the foregoing decisions is given application to the issues herein, the majority opinion is erroneous and should for that reason be reversed.

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[11] *Commonwealth v. Charlestown* (1822), 18 Mass. (1 Pick.) 179, 182-184; *Barker v. Bates* (1832), 30 Mass. (13 Pick.) 255, 259; *Commonwealth v. Alger* (1851), 61 Mass. (7 Cush.) 53, 65, 66, 78, 88, 92; *Commonwealth v. Roxbury* (1857), 75 Mass. (9 Gray) 451, 478-483, 492; *Arnold v. Mundy* (1821), 6 N. J. L. (1 Halst.) 75, 77, 80; *Gough v. Bell* (1847), 21 N. J. L. (1 Zab.) 156, 159; later appeal in *Gough v. Bell* (1850), 22 N. J. L. (2 Zab.) 441, 455, 472, 473, 489; *Shively v. Bowlby* (1894), 152 U. S. 1, 14, 16.

V.

A Rule of Property Law Has Been Established by the Repeated Dicta and Decisions of This Court for the Last 100 Years, on the Faith of Which Innumerable Titles Have Vested, and the Rule Should Not Now Be Rejected by the Court.

A keystone in the arch of Anglo-American jurisprudence is that once a rule of property has become embedded in the law, whether by repeated dicta or specific holdings, on the faith of which titles to property have vested and business has been transacted, subsequent courts will respect and maintain such rule regardless of what their present view would be if the question were first presented in novel form.

Nowhere in the opinion of the Court is the rule of property law even mentioned. Nevertheless, the Court has overturned 100 years of repeated pronouncements by this Court itself, whether dicta or decision, upon the faith of which titles have vested in countless numbers and business has been transacted in multitudinous forms.

The majority opinion recognizes that the language used by this Court "many times" in past decisions shows that the Court then *believed* that the States and not the National Government owned the soil under all navigable waters, whether inland or in the open sea, where it states (p. 15):

> "And in doing so it [this Court] has used language strong enough to indicate that *the Court then believed that states not only owned tidelands* and soil under navigable inland waters, *but also owned soils*

under all navigable waters within their territorial jurisdiction, whether inland or not."

Of course, that statement is true. *Every Chief Justice of this Court down to the present incumbent of that office (with one exception, and he concurred several times), and at least 18 Associate Justices of this Court, including Justices Holmes and Brandeis, over a period from 1842 to 1945, in more than twenty decisions, have repeatedly stated that the States own the beds of "all navigable waters within their respective borders," or have used language of identical import and meaning.* (State's Br. pp. 120-126.)

It makes no difference that some or many of those statements made by the various members of this Court for a period of 100 years were dicta. The rule of property law operates whether the pronouncements of the highest Court in the land were dicta or decisions.

In *United States v. Guaranty Trust Company* (C. C. A. 8, 1929), 33 F. (2d) 533, 536-537, affirmed 280 U. S. 478, the Circuit Court of Appeals said:

> "The contention of the Government is that the doctrine announced by the decisions just cited, upon which appellees rely, *was dictum merely,* and therefore not entitled to weight as a determination by the Supreme Court . . . it may be said that while, strictly speaking, the rule announced by the Supreme Court in a number of these cases may be regarded as dictum, nevertheless *the reannouncement of the doctrine repeatedly over a period of more than 100*

years serves to establish it, not only as the consistent view of the Court, but also as a rule of property upon which practical transactions have been, and are being, based."

The reason for this rule is obvious. Citizens have a right to transact their business, purchase realty, make leases, and engage in commerce on the assurance that the pronouncements of this Court, particularly when repeated time after time, become unalterable and will be maintained and enforced by this Court. This is the least that a citizen has a right to expect from the solemn pronouncements of this Court. This is a basic matter of public policy. If it were not so, law as such becomes meaningless.

A just application of this rule of property law to the facts of the instant proceeding compels a reversal of the majority opinion.

VI.

Prescription and Acquiescence: The Majority Opinion, in Its Treatment of the Subjects of Prescription and Acquiescence, Has Deprived the State of Its Sovereignty and Relegated It to the Position of a Private Individual.

The majority opinion pays no heed to the special rules of prescription and acquiescence long held by this Court to govern property rights as between sovereign States and as between a State and the Nation, holding that

> "The Government . . . is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; . . ." (Op. p. 18.)

This treatment involves the fundamental error of assuming that the present action is a suit between the United States as a sovereign on the one side, and a private citizen on the other. On the basis of this erroneous assumption the Court applies the general rule that private rights may not accrue against the sovereign by reason of "principles similar to laches, estoppel, adverse possession." (Op. p. 17.) Even as to a private individual there are exceptions to this rule. (*United States v. Chavez*, 175 U. S. 509, 522.) But the fundamental error here is that *the rule relied upon by the Court has no application at all in a suit between two sovereigns.*

The State of California appears in this Court as a sovereign State. In *Skiriotes v. Florida*, 313 U. S. 69, 77, the Court, through Mr. Chief Justice Hughes, said:

> "Save for the powers committed by the Constitution to the Union, the State of Florida has retained the status of a sovereign."

The same is true of California.

Indeed, the only basis upon which this Court has original jurisdiction in the present case is the fact that it is a suit between sovereigns. In *United States v. Texas,* 143 U. S. 621, 646, when the question of original jurisdiction of this Court over a State was first raised, the Court said:

> "The submission to judicial solution of controversies arising between these two governments, [*i. e.,* the Federal Government and the State of Texas] 'each sovereign, with respect to the objects committed to it' . . . does no violence to the inherent nature of sovereignty."

The rules as to prescription applying between sovereigns have been recognized by this Court in a multitude of decisions. (State's Br. pp. 138-143.) The principle is summed up in the statement in *Arkansas v. Tennessee,* 310 U. S. 563, 570, where the Court said:

> *"Prescription* . . . may be defined as 'the acquisition of sovereignty over a territory through continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order. . . .
>
> "This principle of *prescription* and acquiescence, when there is a sufficient basis of fact for its application, so essential to the 'stability of order' as between the States of the Union, . . ."

Likewise, the rule as to acquiescence has been applied by this Court many times. The principle of acquiescence

is summed up in the statement in *Indiana v. Kentucky,* 136 U. S. 479, 510, as follows:

> "It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority."

These principles apply not only between States but between a State and the Federal Government, as this Court has held in *United States v. Texas,* 162 U. S. 1, 62, and *New Mexico v. Texas,* 275 U. S. 279, 295, 298, 300.

The effect of the Court's disregard of these settled principles as to the doctrines of prescription and acquiescence between sovereigns is to strip the State of California of the benefits of its constitutional status as a member of the Union of States, again striking at the very foundation of our Federal system.

(A) Title to the Entire Area Is in California on the Doctrine of Prescription.

All elements required *by the decisions of this Court* to establish title in a State by prescription are present in this case (State's Br. pp. 145-151), and may be summarized as follows:

> (i) Public assertion of ownership: California has consistently done this in its Constitution, through its Legislature, and by its courts, for about 90 years.
>
> (ii) Actual occupation, possession and use of substantial portions of the lands in question: The State, its grantees, lessees and licensees, have occupied, possessed and used very large portions—*over 10% of*

the 3,000 square miles—of the submerged lands in the 3-mile belt

(a) By the State granting substantial portions of the 3-mile belt to the coastal cities, commencing in the year 1911;

(b) By the building of wharves, piers, breakwaters, groins, sea-walls and jetties, commencing in the year 1858;

(c) By the drilling into and upon the submerged lands as far out as one mile and the discovery and development of oil and gas in six submerged land oil fields, commencing in the year 1921;

(d) By assessing and collecting taxes upon interests in and to the submerged lands for many decades;

(e) By regulation and control of the fish and fisheries owned by the State upon the basis of the ownership of the submerged lands from the beginning of its Statehood; and

(f) By leasing areas in the Pacific Ocean for kelp harvesting, beginning in the year 1917.

(iii) Actual expenditures of capital and labor in and upon the lands in question: The State, its grantees, lessees and licensees, have expended enormous sums in developing and improving substantial portions of the submerged lands in controversy.

(iv) Nonassertion of any claim of ownership by the United States: For a period of approximately 95 years the United States of America has failed to assert any ownership, and in fact it has officially on numerous occasions ruled that California was the owner.

(v) Constructive possession of whole belt based on actual possession of part: The actual possession of substantial portions of these submerged lands, under claim of ownership of all such lands within the State boundaries, amounts to constructive possession of the entire submerged lands and gives the State title by prescription to all submerged lands within its boundaries. (*Michigan v. Wisconsin* (1926), 270 U. S. 295, 313-318.)

Thus the title of the State of California to all submerged lands in controversy is firmly established on the principle of prescription whereby long-continued and undisturbed possession of land under claim of ownership attains the status of absolute title.

(B) In the Alternative, Title to the Area Actually Occupied, Granted, Leased, or Improved, Is in the State, Its Grantees, Lessees and Licensees, Under the Doctrine of Prescription.

Although we believe that this is a proper case to apply the doctrine of constructive possession under the authority of *Michigan v. Wisconsin, supra,* because of the fact that about 10% of the total area has been occupied, granted, leased or improved, nevertheless, if the Court concludes that the rule of constructive possession is inapplicable, then there is an alternative ground requiring this petition to be granted. Certainly, California is entitled to an application of this rule of prescription, at least as to those areas of the lands in controversy that have been occupied by it or those acting under it and which have been granted, leased, licensed, or improved. We see no possible escape from the justness of this minimum application of the rule of prescription.

VII.

The Alleged Distinction Between Inland Waters and the Marginal Sea Has No Constitutional or Statutory Basis Nor Any Basis in Reason, and Is Created for the First Time by the Majority Opinion Herein.

The majority opinion asserts and finds some real distinction between the ownership of inland waters and the marginal sea, the opinion reading (p. 14):

> ". . . we are not persuaded to transplant the *Pollard* rule of ownership as an incident of state sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern. If this rationale of the *Pollard* case is a valid basis for a conclusion that paramount rights run to the states in inland waters to the shoreward of the low water mark, the same rationale leads to the conclusion that national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward in the three-mile belt."

With all respect, this completely misstates the rationale of the *Pollard* case. That case was not based on the theory that local interests predominate in inland waters. Therefore, it is wrong to say that the same rationale leads to the conclusion that national interests predominate in the three-mile belt. This attempt to make a distinction beween inland waters and the three-mile belt on the basis that local interests predominate in the one and national interests in the other is wholly without precedent in law or fact and was invented by plaintiff's counsel in its opening brief in an attempt to distinguish the ruling of the *Pollard* case and other cases which follow it. The true rationale of the *Pollard* case, as this Court has repeatedly

said, is that the State is the owner, as trustee for the public, of all lands beneath the navigable waters within its boundaries. Navigability, which is the foundation of the public interest in such waters, is the criterion and rationale of the *Pollard* case. Local and national interests are false quantities in the argument. Our assertions in this regard are merely a repetition of what this Court has said time after time (See State's Brief, pp. 117-126), that the rationale of State ownership is navigability, and is the same for both inland waters and the three-mile belt.

Furthermore, the Court in referring to the many cases where this Court used language strong enough to indicate that the States owned the soil under all navigable waters within their boundaries, says that all these later statements were not used as announcing a new rule but "in explanation of the old inland water principle." It is quite true that these later cases explained the *Pollard* case, but they did not explain it in terms of the inland water principle because the *Pollard* case was not based on any inland water principle. The later cases explained the *Pollard* case in terms of its true rationale, namely, the existence of navigable waters within the State's boundary. A typical example is *Barney v. Keokuk,* 94 U. S. 324, 338, where the Court, after quoting *Pollard v. Hagan* and *Martin v. Waddell,* said, "These cases related to tidewater, it is true; but they enunciate principles which are equally applicable to all navigable waters." In the light of this and the many other cases which explain the *Pollard* case on the very same basis, we respectfully submit that the Court is in error in its interpretation of the rationale of the *Pollard* case and the cases which followed.

Likewise, the clear statement of State ownership of the marginal sea in the *Abby Dodge* case (223 U. S. 166, 174) is by no means "in explanation of the old inland water principle." The holding of the Court was that " 'The principle has long been settled in this Court, that each State owns the beds of all tide-waters within its jurisdiction, unless they have been granted away. *Pollard's Lessee v. Hagan,* 3 How. 212; . . .' " There is nothing here about inland waters, but rather the statement of the rule as to all tidewaters within a State's boundary, showing that the rule is the same whether between high and low tide or in the marginal sea. This statement was made in the *Abby Dodge* case in support of the ruling that an Act of Congress regulating the taking of sponges had no application within the territorial limits of Florida. The reason that the Act of Congress had no application was that Florida owned the beds of its marginal sea. If the United States had owned these beds or had even had the proprietary right to appropriate the sponges, the statute would have been valid within Florida's limits (*Camfield v. U. S.,* 167 U. S. 518).

The Court also makes the following statement regarding the *Abby Dodge* case: "But the opinion in that case was concerned with the state's power to regulate and conserve within its territorial waters, not with its exercise of the right to use and deplete resources which might be of national and international importance." We respectfully submit that this incorrectly reflects the decision in the *Abby Dodge* case. The decision held that state owner-

ship of the bed of the sea, including the sponges growing in the soil, rendered a Federal statute relating to those sponges unconstitutional. Sponges are an important natural resource of the soil. And the opinion therefore did protect Florida's right to use and deplete these resources. Whether sponges are of greater importance from a national or international standpoint than oil or some other natural resource is, we submit, entirely irrelevant. We cannot believe that this Court intends to hold that rights of ownership depend upon the relative importance of the property involved. And if this is the Court's holding, then the question arises as to who is to determine which natural resource is of national or international importance and which is not. In the present case no such determination has been made by any agency of the Federal Government and certainly it is not within the province of the Court to determine that question in the first instance. Furthermore, the present controversy is by no means limited to oil, but involves all proprietary rights in the marginal sea, and hence the question of the relative importance of different resources must of necessity be immaterial to the Court's decision. We submit that the Court is in error in its interpretation and application of the *Abby Dodge* case and that there is nothing in this or any other case which supports the alleged distinction between the so-called inland waters and any other navigable waters which are within a State's boundary.

The doctrine of States' ownership of the beds of the Great Lakes has been explained by this Court on sev-

eral occasions as resting upon the same State ownership of the marginal belt along the sea coasts. (State's Br. pp. 110-112.)

And this very distinction as to Federal-State ownership of the beds of inland waters and international boundary waters, it will be recalled, was rejected with a brush of the hand by Mr. Justice Holmes and a unanimous court in 1908 in *United States v. Chandler-Dunbar Co.*, 209 U. S. 447, discussed under Paragraph II hereof, and which case was not considered at all by the majority opinion herein.

Conclusion.

The majority opinion, if it is allowed to stand, will deprive every coastal State of enormous areas of property and of valuable property rights which have long been held and occupied by them under their respective State laws as actual and legal owners. We desire respectfully to call attention to the fact that in support of the majority opinion not one previous decision of this Court is or can be cited, although, as the Court says, there are many of its own decisions which flatly declare the States to be the owners of these properties. There is not one decision of any State court which supports the majority opinion although a multitude of decisions of able State courts uphold State ownership. There is not one constitutional provision cited in support of the majority opinion except those general grants of power which this Court has held

carry with them no proprietary rights. There is not one Federal statute cited in support of the majority opinion, although there are many statutes, particularly those dealing with kelp and sponges, which clearly support State ownership and there are a great many State statutes which declare and assert State ownership. There is not one decision or opinion of any department of the Federal Government prior to 1937 which supports the majority opinion, although there are many decisions of the Interior Department, the Attorney General, the War and Navy Departments, the Department of Agriculture and other departments which specifically uphold State ownership. Not one Federal officer has ever attempted to assume rights of ownership or possession of the three-mile belt, although State officials and State grantees and lessees in every coastal State under State laws have actually occupied large portions of the three-mile belt as owners or lessees. In a word, there is absolutely nothing upon which the Federal claim in this case is or can be predicated except the unsupported declaration of the majority of this Court that national power gives the Federal Government the right to appropriate these properties to its own use, a proposition which as we have shown is contrary to all past decisions on the subject. If this decision should stand, no one today could foretell the extent to which future Federal administrations may go in asserting the right to expropriate private property and property rights on the basis of the vague concept of "national power" which is relied upon therein.

It is respectfully urged that this petition for rehearing and reconsideration of the majority opinion should be granted and that the majority opinion should be reversed on the grounds set forth herein; or, in the alternative, that the petition should be granted and the case set for further argument.

Respectfully submitted,

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Certificate of Counsel.

The undersigned, Fred N. Howser, Attorney General of the State of California, hereby certifies that the foregoing Petition for Rehearing and Reconsideration of the Majority Opinion is presented in good faith and not for purposes of delay.

FRED N. HOWSER,
Attorney General of the State of California.

FILE COPY

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. [redacted]6—Original.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION AND BRIEF OF ROBERT E. LEE JORDAN FOR LEAVE TO FILE MOTION AS AMICUS CURIAE, OR IN THE ALTERNATIVE AS INTERVENOR, WITH RESPECT TO TWO STIPULATIONS EXECUTED JULY 26, 1947.

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August, 1947.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 12—Original.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION OF ROBERT E. LEE JORDAN FOR LEAVE TO FILE MOTION AS AMICUS CURIAE, OR IN THE ALTERNATIVE AS INTERVENOR, WITH RESPECT TO TWO STIPULATIONS EXECUTED JULY 26, 1947.

Robert E. Lee Jordan, as Amicus Curiae, or in the alternative as Intervenor, asks leave to file a motion, and brief in support thereof, for an order declaring that the two stipulations entered into by the Attorney General of the United States and the Secretary of the Interior with the State of California, dated July 26, 1947, be vacated, set aside and declared null and void, upon the grounds; (1) That the Attorney General and the Secretary of the Interior are without statutory authority to bind the United States by any stipulation or agreement purporting to alien-

ate or surrender title to or dominion over any part of the submerged lands belonging to the Federal Government, or the oil in them. (2) That the said stipulations are contrary to public policy and the provisions of the Oil Land Leasing Act of 1920, as amended. (3) That the stipulations are contrary to the opinion of this Honorable Court and in contempt thereof. (4) That your petitioner has a substantial lawful interest in the subject matter of the two stipulations, that the stipulations deny to him his rights under the Oil Land Leasing Act of 1920, as amended. That the material facts presented will assist the Court in the consideration of the said stipulations and are believed to be vital to the issues raised.

Copies of the attached motion and brief have been delivered to Counsel for the Government and the State of California.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for Petitioner,
ROBERT E. LEE JORDAN.

BRIEF OF ROBERT E. LEE JORDAN FOR LEAVE TO FILE MOTION AS AMICUS CURIAE, OR IN THE ALTERNATIVE AS INTERVENOR, WITH RESPECT TO TWO STIPULATIONS EXECUTED JULY 26, 1947.

STATEMENT.

On July 26, 1947, the Attorney General of the United States and the Secretary of the Interior entered into two stipulations with reference to the submerged lands and the oil in them with the Attorney General of the State of California. The submerged lands and the oil in them, situated off the west coast of California and below the low water mark, were the subject of an opinion of this Honorable Court in the instant case.

Your petitioner maintains that he has a right and interest in a certain tract of submerged land adjacent to the City of Long Beach by virtue of an approved filing upon the records of the Department of the Interior and that his rights are jeopardized and prejudiced by the two said stipulations. F.R.C.P. Rule 24.

That the said stipulations provide, by their terms, that they be deposited with the Clerk of this Court and "nothing herein shall be deemed in any way to abridge the power or jurisdiction of the Supreme Court with respect to the subject matter of this action," and that the jurisdiction lies in this Court to determine the validity of the said two stipulations.

ARGUMENTS.

First Ground

In support of the first ground set out in your petitioner's motion to declare the stipulations entered into between the Attorney General, the Secretary of the Interior, and the State of California, as null and void, your petitioner would point out that there is no statutory authority which grants

the Department of Justice and Department of Interior the right to enter into stipulations such as those which were made on the date of July 26, 1947.

The one stipulation, concerning the exclusion of certain submerged lands in what is described in the stipulation as San Pedro Harbor and which the Attorney General and the Secretary of the Interior have agreed upon as "not being claimed by the plaintiff in this litigation" is subject to close scrutiny.

The complaint filed by the Attorney General claims on behalf of the Government,

> "the land, minerals and other things of value underlying the Pacific Ocean lying seaward of the ordinary low water mark on the coast of California and outside the *inland waters* of the State."

While it is true that in the argument in support of the complaint, the following appears,

> "this suit does not involve any harbors, bays, rivers or other *inland waters* of California. It is limited solely to that portion of the open sea embraced within the three mile belt."

There can be no question that there is a vital difference between the argument advanced by the Attorney General and the wording of the complaint. The relief prayed for, is covered by the wording of the complaint, which excludes only, all "*inland waters of the State.*" If it was the intention to ask the Court to exclude bays, harbors, rivers, or other inland waters of California, these words should appear in the complaint. There is no indication of acceptance by the Court, of the argument, as being an amendment of the complaint, or expressed agreement by the Court, to the definition of "inland waters" or the exclusion of harbors, bays, rivers, etc. Your petitioner respectfully submits that the judgment being on the complaint, it does not include the limitations the Attorney General seeks to place upon the decision of this Honorable Court, by reason of the arguments advanced; and, therefore, the assumption of the

stipulation and the arbitrary setting aside of certain designated places on the Pacific Coast, are not in accordance with the finding of this Court, or within the relief granted by the finding of this Court. The provisions of the stipulations are, therefore, unwarranted in fact and not founded upon the judgment of this Honorable Court.

Inland waters are defined as being "interior water not on or bordering the sea; waters within the land and away from the coast; such waters as canals, lakes, rivers, water courses, exclusive of the open sea." (*U. S.* v. *Steam Vessels of War*, 106 U. S. 607, 1 Sup. Ct. 539; *The Cotton Plant*, 10 Wall. 581, 19 Law Edition 983; Black's Law Dictionary.)

The petitioner further submits that there is no authority in the statute which authorizes the Attorney General or the Secretary of the Interior, or either of them, to enter into any stipulations with respect to submerged lands in "the open sea," awarded to the Government by the finding of this Honorable Court. The opinion of this Honorable Court, on page 18, of the Advance Report of Opinion, states, "The Government holds its interest here and elsewhere in trust for all of the people and is not to be deprived of its interests by the ordinary Court rules decided particularly for private properties, individually owned pieces of property; and *officers which have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its rights by their acquiesence, laches or failure to act.*" The execution of the stipulations by the heads of the two Departments, as officers, purporting to exclude the Harbor of San Pedro from the instant litigation, is a willful and unlawful usurpation of the powers of Congress, which alone has the power, to dispose of the territory of the United States and therefore void. (U. S. Constitution, Article 4, Paragraph 3.) The Attorney General and the Secretary of the Interior are without power to waive any of the rights of the Government in any land of the Government and in attempting to do so have, in the opinion of your petitioner, set at naught the opinion of this Court, which granted "full dominion" to the United States Gov-

ernment in the submerged lands in the "open sea" and the oil in them.

One stipulation contains a statement that three designated places on the West Coast of California belong, by implication at least, to that State. The basis for this surrender of property rights and interests is found in the stipulation which reads as follows,

> "The following areas are not claimed by the plaintiff in this litigation."

There is no authority for the foregoing statement. There is nothing in the complaint waiving the Government's claim or Act of Congress to support it.

The Attorney General and the Secretary of the Interior predicate quite a lot on this statement. Simply because certain pieces of property are not claimed in the instant litigation, they personally judge them to belong to California and purport to surrender all claims of the Government to them, solely and only because the question of title or dominion was not raised in this particular action. Fortunately, however, California still is in the position of having to prove title to the three places. The signers of the stipulation, however much they wish to deprive the Government of rights to the oil, are still subject to the restrictive action of Congress.

It was apparently intended, on the part of the Attorney General and the Secretary of the Interior, by entering into these stipulations, to reserve to the State of California, its sub-divisions, and its illegal lessees, the largest oil pool on the west coast, which is adjacent to the City of Long Beach, and thus deprive the Government of its rights to oil in that area of submerged land, granted it by the opinion of this Honorable Court. It may be of more than passing interest, to learn why the strip of submerged land in San Pedro Harbor was so set aside and delimited. From such information as is available, it appears that the parties to the stipulations secured a geodetic map, started at Point Firman, with a red pencil and arbitrarily arrived at a place

along the beach a short distance beyond Long Beach. It is not known what inspired hand guided this red pencil, which just so happened to hit a point on the coast where it did. The red line might just as well have been extended to Point Loma, or San Diego and there seems little rhyme or reason for that red pencil stopping where it did, except that it was necessary to so extend it to include the great oil pool. This is a new procedure for the transfer of proprietary rights in land and doubtless will be hereafter referred to as the precedent of the red pencil. We live in strange times. The interested parties have drawn an arbitrary line creating a bay, which they could enlarge or make smaller at will, by the simple expedient of a wandering red pencil, regardless of the opinion of this Court.

The stipulations do not, in terms, set out by and under what authority they have been executed. They are signed with the personal signatures of the Attorney General and the Secretary of the Interior. They have had their official designations placed under their names, presumably to carry a conviction of authority to the reader and give added weight and sanctity to the documents. Surely, these two gentlemen did not and do not think, by this form of execution of the stipulations, that the Government would be bound by the provision of their personal agreements. These stipulations are exactly what they purport to be, an expression of individual desires and hopes, not to effectuate the opinion of the Court, but in the interest of the trespassers.

Your petitioner refers to the map, marked Exhibit 2, which was filed by your petitioner as Amicus Curiae, of a survey made in 1868 which sets out that section of the coast, as it existed at that time, and which does not indicate any bay such as has been created by the Attorney General and the Secretary of the Interior. Your petitioner further points out that in his brief as Amicus Curaie, in the instant case, he called attention to the fact that since 1938 the City of Long Beach has created an artificial harbor, has filled in over the submerged lands and that this was done

for the purpose of trying to claim the oil in the submerged lands on the grounds that it was in the Harbor of Long Beach. The development of this artificial Harbor appears in Exhibit 4 of your petitioner's Amicus Curiae Brief. This Exhibit shows the extent of the fills made and the number of wells which have been located upon the filled-in submerged lands, to substantiate the foregoing statements. (*Patton* v. *City of Los Angeles,* 169 Cal. 521).

California will risk much if it relies upon the stipulations signed by the Attorney General and the Secretary of the Interior, individually, as being a quit claim of the three places by the Government or as a defense to any claims which may arise from acting upon the faith of the stipulations. The point, however, is upon what theory of good faith the Attorney General and the Secretary of the Interior could enter into such stipulations, in the light of the opinion of this Court.

Second Ground

In support of the second ground for declaring the stipulations null and void, the stipulations are contrary to public policy and contrary to the provisions of the Oil Land Leasing Act of 1920, as amended.

Your petitioner, in his reply brief to the brief of California (pages 6-20), fully described and set out the policy of the Government for reservation of the minerals beginning in 1785 and continuing up to the time of the passage of the Oil Land Leasing Act of 1920. For the sake of argument and granting that the submerged lands which the Attorney General and Secretary of the Interior have attempted to exclude from the operation of the judgment of this Court, it still must be asserted that any oil which might be found in the submerged lands so granted by stipulation in the artificial harbor of Long Beach, is reserved for the United States Government, and even should this Court hold that the submerged lands so excluded by the stipulations should go to the State of California, there can be no waiver

of the rights of the Government to the oil, which might or could be made by the Attorney General and the Secretary of the Interior which could bind or deprive the United States Government of its rights to the oil. (U. S. C. A. Title 43. Chapter 20 Sec. 865. *Mullan* v. *U. S.*, 118 U. S. 271, Argument F in Petitioner's Amicus Curaie Brief, pages 14-15-16).

The Oil Land Leasing Act of 1920 (41 Stat. L. 437) was passed for the purpose of enabling citizens of the United States to secure leases on land containing oil and other minerals for the purpose of development. The first paragraph of the Oil Land Leasing Act provides as follows:

> "That deposits of coal, phosphate, sodium, oil, oil shale, or gas in lands containing such deposits owned by the United States * * * shall be subject to disposition in the form and manner provided by this Act to citizens of the United States * * *."

In August of 1935, the Act was amended, and Paragraph 3 of Section 17 of the Act provides,

> "That the person first making application for the lease of any land not within any known geological structure, of a producing gas or oil field, who is qualified to hold a lease under this Act * * * shall be entitled to a preference right over others to a lease of such land without competitive bidding * * *."

The regulations issued by the Department of Interior, Land Grant Office, Circular No. 1386 states with reference to Section 17 of the Act, Paragraph 9, page 4 of the Circular,

> "A preference right over others to a lease without competitive bidding is granted under this Section as amended to (a) the person first making application for a lease of any land not within any known geological structure of a producing oil or gas field who is qualified to hold a lease under the Act."

The Secretary of the Interior has, by joining in the stipulations with the Attorney General, it would seem,

placed himself in a very precarious position. Under the Leasing Act, which he is bound by oath to uphold and follow, it is his duty and obligation, now that the interests of the Government in the oil in the submerged lands have been established, to issue oil and gas leases to those applicants who have qualified for leases under the provisions of the Leasing Act. By joining in the stipulations, he has repudiated the law and bound himself to become a party to a procedure which violates the law, denies the rights of American citizens to leases under the law, and contrary to the opinion of this Court. He has agreed to confirm illegal leases and has consented to permit the State of California, the trespasser, to issue further leases of Government land with his approval and consent.

By what right or authority can the power granted to the Secretary of the Interior, to make leases of Government land, be delegated or transferred by stipulations to the State of California and legalized merely by the consent of the Secretary of the Interior?

It is reported in the press, that in order to extricate himself from this delicate situation, the Secretary of the Interior has approached the Attorney General, seeking for an opinion that the Oil Land Leasing Act of 1920, as amended, does not cover the submerged lands. Such an opinion would enable him to declare void all of the legal filings for leases of the submerged lands under the Leasing Act and clear the way for the accomplishment of the purposes, political or otherwise, which seem inherent in the stipulations.

Since the foregoing paragraph was written, it is now reliably reported that the relief ardently prayed for by the Secretary of the Interior, to support his unhappy position, has materialized. The desired opinion of the Attorney General has been received and the decks are now cleared for action. The Interior Department has stated that, by reason of this opinion of the Attorney General, no leases will be granted the applicants who have filed applications for leases of the submerged land under the Oil Land Leas-

ing Act of 1920, as amended. Further comment on the foregoing would appear unnecessary and fruitless. The full circle is now complete.

The stipulations made by the two Departments with the State of California are in derogation of the law and deprives your petitioner of his rights under that law, now that this Honorable Court has determined that the oil belongs to the United States Government.

Third Ground.

In support of the third ground, for declaring the stipulations null and void, your petitioner sets out that the stipulation is directly contrary to the opinion of this Honorable Court and in contempt thereof.

The direction, in the opinion of this Court, provides only

> "that the parties on or before September 15, 1947, may submit a form of decree to carry the opinion of the Court into effect."

The purpose of the stipulations is definitely not one to carry into effect the decree of the Court. Its sole purpose is to prevent any action being taken under the decree against California until July 1948, and thus to nullify the effect of the opinion of the Honorable Court, and with the secret hope that within that period of time, the State of California, doubtless with the assistance of the Attorney General and the Secretary of the Interior, may be able to influence Congress in passing an Act to over-ride the opinion of this Court. As has been noted before, there is no authority for the Attorney General and the Secretary of the Interior to enter into any such stipulations, and their action cannot be considered to be other than a studied contempt for the opinion of this Court.

Attention is called to the fact that one of the stipulations sets forth quite fully the political remarks of the Attorney General at the hearing before this Court, to which remarks two of the Associate Justices properly took exception. It

appears to your petitioner, that these remarks of the Attorney General, constitute the basis of one of the stipulations which has been entered into, and *was made for purely political reasons* and not with a view of carrying into effect the opinion of this Court or in the interests of all the people of the United States, who, under the opinion of the Court, are the owners of the natural resources of the nation.

Your petitioner respectfully calls attention to that part of the decision of this Court which states:

> "that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the State has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil."

This decision definitely places the control of oil within the hands of the Federal Government and the presumption is that the laws with respect to the development of oil and gas, passed by Congress would be followed. The relief for which the Attorney General prayed, in its complaint, as set out on page 1 of the Advance Sheet Opinion of this Court states:

> "The prayer is for a decree to determine the rights of the United States in the area as against California and enjoins California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States."

The Attorney General after making the foregoing prayer for relief, and securing a decree from this Honorable Court supporting his prayer, voluntarily entered into stipulations which set aside the injunction against the trespassers. There may be some other explanation for this action of the Attorney General, but to your petitioner, it looks like contempt of this Court in its worst form. It raises the question of the good faith of the Attorney General in the filing of this action. Why should the Attorney General ask for a finding

of this Court as to the rights of the Government to dominion over the submerged lands and the ownership and control of the oil and then immediately after having secured the desired decree, enter into stipulations to set aside that decree and by the terms of the stipulations threaten this Court by making it evident that steps will be taken in Congress to over-ride and hold at naught the opinion of this Court, made in the interests of all of the people of the nation. It seems to your petitioner that the conduct of the Attorney General should be brought to the attention of this Court for such action as they deem fitting under the foregoing circumstances.

There is no more valuable resource for national defense than oil and your petitioner considers the stipulations as being purposely entered into in the interests of the defendant in this action, as well as for the purpose of depriving the nation of its greatest single supply of oil on the Pacific Coast. From the facts as they appear in the stipulations, a charge of a political conspiracy might well be made.

Fourth Ground.

In support of the fourth ground, advanced for declaring the stipulations null and void, your petitioner respectfully shows this Court that in April, 1938, he filed the first application for a lease in the submerged lands off the coast of California, adjacent to the City of Long Beach, before any one thought there was oil in the submerged lands at that point. He filed under the provisions of the Oil Land Leasing Act of 1920, as amended, and has fully complied with the law and regulations of the Department of the Interior. The Land Division of the Department of Interior made an inspection of the tract filed upon, found that it was the first filing, and assigned to the filing the number LA-052976. Your petitioner applied for a lease of the tract registered by him in the Department of Interior, which application is still pending in that Department. Your petitioner, in 1942, brought suit against Harold Ickes, then Sec-

retary of the Interior, in the District Court for the District of Columbia, asserting title in the United States Government of the submerged lands off the coast of California and demanded that a lease be granted to him. The Secretary, at that time, was under the impression that the submerged lands belonged to the State of California and refused to grant a lease, until the question of title had been determined by this Honorable Court. This action was brought to this Honorable Court on an application for certiorari, which was denied. Almost immediately thereafter, Secretary Ickes changed his mind and decided that the submerged lands belonged to the Government, but still refused to grant a lease until the question of ownership was decided by this Court. The instant action was finally brought by the Attorney General in 1946, with the result that it was held the Government owned the submerged lands and the oil in them.

The line drawn by the Attorney General and the Secretary of the Interior, creating or extending the so-called Bay of San Pedro, cuts through the middle of the tract covered by petitioner's LA-052976. The stipulations provide for the confirmation of the illegal leases issued by the defendant, and its sub-divisions, which illegal leases, by whipstocking, have been draining your petitioner's filing since 1939, and would further prevent the issuance to him of the leases for the said tract under the Oil Land Leasing Act of 1920, as amended, as the Secretary of the Interior has authorized the State of California to issue additional leases, in violation of the Leasing Act. Your petitioner has been informed and verily believes that it is the intention of the Attorney General and the Secretary of the Interior, by means of the execution of said stipulations, to deny him his legal rights under the law, and to prevent his securing a lease. (*Cartello* v. *U. S.*, 93 Fed. (2) 412; Cr. Code 19, 18 U. S. C. A., § 51.)

Your petitioner believes that he has definitely established his rights under the Oil Land Leasing Act of 1920, as amended, to a lease, that the stipulations entered into by

the Attorney General and the Secretary of the Interior will deprive him of his rights under the Oil Land Leasing Act of 1920, as amended, that the only way in which his rights may be protected would be by the declaration of this Court holding null and void the stipulations of July 26, 1947, entered into between the Attorney General and the Secretary of the Interior with the State of California.

CONCLUSION.

It has been set out in the stipulations that their purpose was to provide a modus vivendi for the continued production of oil and that the question of the delimiting of the marine belt or marginal sea would take a considerable period of time and a stoppage of production would result in discomforture for the American People.

These positions are untenable, the complaint calls for a delimitation from the "low water mark." The complaint does not seek the delimitation of the low water mark as of any particular date. The objections and difficulties presented in the stipulations, to establishing the line of demarkation between the "three-mile marginal belt" and the tidelands and inland waters of California, are advanced only for the purpose of muddying the water. The opinion of the Court on page 4 of the Advance Sheet Opinion, last paragraph on the page, states:

> "Despite difficulties, this Court has previously adjudicated controversies concerning submerged land boundaries * * * such practice is commonplace in actions similar to this, which are in the nature of equitable proceedings."

The position of this Court may be readily and easily resolved, by the Court decreeing that the survey of the Surveyor General of 1868 be adopted as the line of demarkation. (Exhibit 2, Amicus Curiae Jordan Brief.) This will obviate any further action on the part of the Court and definitely settle the question of boundaries.

There is a lawful way by which a continuous production of oil may be secured and that is by following the law as set out in the Oil Land Leasing Act of 1920, as amended. Under this Act the ownership of the submerged lands and the oil in them, being determined to be in the United States, the Secretary of the Interior should immediately grant leases to those who have qualified under that Act. These lessees can at once make contracts with those who hold illegal leases from the State of California and are now draining the oil. All of the facilities for continuous production are available. By this procedure, the oil fields could be developed, as Congress intended they should be, according to law.

A reading of the two stipulations presents a rather unpleasant picture. The complaint alleges that the State of California was a trespasser, that it has been executing leases without right and has been receiving royalties and rentals, to which it was not entitled. The opinion of this Court found these facts to be as alleged. It is well to consider how and in what respects the State of California and its sub-divisions became trespassers. In 1929, the Leasing Act, which had been passed by the State of California in 1921 was repealed, for the reason that an investigation by a special committee appointed by the legislature of the State, reported that the State had no right or title in the tide and submerged lands off the coast of California or the oil in them. The said Act of 1929, Chapter 536 of the Statutes of California prohibited any State official or sub-division or official thereof from granting any leases to drill upon the

> "tidelands, either filled or unfilled, submerged lands, overflowed lands or beds of navigable rivers or lakes, and by so doing to extract minerals therefrom."

It must be presumed that with passage of this Act in 1929 the State of California was fully advised and convinced that Congress had not granted to that State any rights to oil in tide and submerged lands, which the State of California had been exercising prior to the passage of the Act of 1929.

There was at that time, and now is, a law against whip-

stocking, a practice of drilling for oil by slanting the well so as to drain oil from another's land. A driller was confined to the boundaries of his own land, and if by chance or design his well extended beyond his own boundary, he was liable in damages as a trespasser. In 1938, notwithstanding the legislative declaration prohibiting the granting of leases to drill on the lands excluded by the Act of 1929, the State of California passed the State Land Act (52nd Legislature, Chap. 5), an Act permitting the drilling of slanting wells from the uplands out into the tide and submerged lands. The law which was effective against the individual and made it unlawful for him to drill into his neighbors' land, now became lawful, so long as the land drilled into belonged to the United States Government, and the oil taken from under those lands was the property of the nation. There was a law to protect a man from theft of oil by his neighbor, but a license given by the State of California to the thief who stole from the Government. It is most difficult to understand these two divergent codes of morals, to say nothing of the legal implications. It is even more difficult, when the full extent of the trespass is understood and known, to understand how the two Departments, executing the two stipulations, under the facts, can show their good faith, as public servants, in the interest of the people of the nation, whose rights they are, by oath bound to protect.

This question quite naturally arises, does not the State of California, by evading the prohibitions set out in the Act of 1929, the passage of the Whipstocking Act of 1938, and in the issuance of leases to the oil companies to take the oil from the tide and submerged lands, lay itself open to a charge of conspiracy against the United States Government to cheat and defraud the United States Government of its oil? Under the facts, the State of California and its subdivisions, together, with those who have taken leases from it, with a full knowledge of the facts; which were well known, are entitled to no equities or consideration, but on the contrary, should be held liable in damages for the acts willfully committed during the past eight or nine years.

These stipulations are made by the Attorney General and the Secretary of the Interior with an admitted trespasser. They condone the illegal acts of the State of California; they sanctify the illegal leases and confirm them, and further authorize the State of California by and with the consent of the Department of Interior, to execute new leases and carry on.

There has probably not been another instance of a seeming lack of legal ethics quite equal to the present one. The action of the heads of those two Departments set at naught the Oil Land Leasing Act, deny the rights of those who have filed under that Act, nullify their approved filings, and enter into stipulations directly contrary to the finding of this Court, which has denied to California and its leseess (the oil companies), all rights in the oil.

There is a great shortage of oil and the Armed Forces are demanding additional supplies from the oil companies, which they have been unable to secure in the past, resulting in restricted operations in practically all branches of the Service. Under the finding of this Honorable Court, all of the oil in the submerged lands now belongs to the nation and is subject to disposition for the National Defense. No longer need the Armed Forces have to beg from the oil companies their essential supplies of oil. Under the finding of this Court, all of this oil can be first channeled into the National Defense and the nation will have at least one reserve source of supply, free from the control of the oil companies. Only in this way can there be full freedom for efficient operation. The stipulations, if permitted to stand will still leave the Armed Forces subject to the dictation of the oil companies and the State of California. There is too much involved to permit such a situation to exist. These stipulations must be declared null and void and the due process of law again become operative.

Wherefore, your petitioner prays this Court will decree that the stipulations are null and void, by reason of being beyond the powers of the Attorney General and the Secre-

tary of the Interior to make; that they are not binding upon the United States Government; that they are contrary to public policy, directly opposed to the opinion of this Honorable Court, and in contempt thereof; against the provisions of the Oil Land Leasing Act of 1920, as amended; and, the rights of your petitioner thereunder; and, that leave to file the foregoing be granted.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for Robert E. Lee Jordan.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. ~~12~~ 6, ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION OF ROBERT E. LEE JORDAN FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN OPPOSITION TO THE PETITION OF THE ATTORNEY GENERAL FOR A PROPOSED SUPPLEMENTAL DECREE.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for Petitioner
ROBERT E. LEE JORDAN.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 12, ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION OF ROBERT E. LEE JORDAN FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN OPPOSITION TO THE PETITION OF THE ATTORNEY GENERAL FOR A PROPOSED SUPPLEMENTAL DECREE.

Robert E. Lee Jordan, as amicus curiae, asks leave to file the attached memorandum brief in opposition to the proposed supplemental decree submitted by the Attorney General and filed January 29, 1948, upon the grounds:

(1) That, by the opinion and decree of this Court, those parts of the marginal belt which are described in subsections (a) and (c) of said petition, are fully covered by the opinion and decree of this Court and no additional or supplemental decree is required insofar as the interests of the United States in the marginal belt, as described in said peti-

tion, are concerned. A supplemental decree would be mere surplusage.

(2) That the marginal belt and territory embraced by subsection (b) encloses the bay created by the Attorney General through the simple device of drawing a line upon a map. The extent of this bay is set out in one of the stipulations, which purports, on the sole authority of the Attorney General, to disclaim to California a part of the territory of the United States. The petition asks this Court to confirm the act of the Attorney General in his efforts to dispose of the territory of the United States, by the device employed, and through the stipulation made by him and to legalize his surrender of the rights of the United States in the land and oil of the United States, by judicial decree. The petition of the Attorney General, representing as it does, interests adverse to the United States, should be denied.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for Petitioner
ROBERT E. LEE JORDAN.

[Copies of the attached petition have been delivered to Counsel for the Government.]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 12, ORIGINAL.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

MEMORANDUM BRIEF OF ROBERT E. LEE JORDAN, AS AMICUS CURIAE, IN OPPOSITION TO THE PETITION OF THE ATTORNEY GENERAL FOR A PROPOSED SUPPLEMENTAL DECREE.

Leave is asked to file this brief for the reason, among others, that the nation and the people are not being represented in this Court by an Attorney General interested in the protection of the rights of the Government and its citizens, as exemplified by the petition of the Attorney General for a supplemental decree which seeks, upon a fiction created by the Attorney General, to alienate the territory of the United States and dispossess the nation of one of its great natural resources—oil, in the marginal belt off the coast of California.

The first paragraph of the proposed supplemental decree states:

"For the purpose of giving effect to the conclusions of this Court as stated in its opinion announced June 23, 1947, and the decree entered by this Court on October 27, 1947,"

One may well ask in what part of the opinion or decree of this Court, was there any conclusion stated, that the territory of the United States and the oil deposits of the nation should be given away as provided in subsection (b) of the proposed supplemental decree. This covers that part of the marginal belt at Long Beach and San Pedro, California, disclaimed by the stipulation made by the Attorney General and the Secretary of the Interior on July 26, 1947. By what authority can the Attorney General speak for the United States, saying the United States does not claim this or that and make it appear that by his unsupported statement, his words and acts could bind or surrender the rights and interests of the nation? What has the Attorney General submitted to this Court in or as evidence that what he proclaims or has done is either within his power or the law? The law places limitation on words, and the words, in the instant case, seem to be mostly adverse to the interests of the Government.

With respect to subsections (a) and (c), of the proposed supplemental decree, by consulting the opinion of this Court, setting out that California has "no title or interest" in the submerged lands and the oil, it would appear that no further decree is or will be necessary to substantiate the claim of the Government to the marginal belt or the oil along the coast of California, which extends from the low-water mark, out to the three-mile limit. There is, therefore, no purpose in asking a further decree with respect to the segments of the coast which are and have always been "open sea," and the only reason your petitioner can advance for the asking of a supplemental decree for the segments of the marginal belt in the open sea, described in subsections (a) and (c), is that they were put in, in order that

paragraph (b) might be sandwiched in between to hide the real purpose for which the supplemental decree was asked.

As has been pointed out in a previous brief, filed by your petitioner, California has not at any time presented to this Court evidence of the grant to it by Congress of the "inland waters" of that State, nor any evidence that California selected any "inland waters" as a part of the 500,000 acres granted to it by Congress. The elimination of the inland waters from the original complaint filed by the Attorney General is seemingly regarded by him as a legal disclaimer or release of the Government of the inland waters to the defendant State. The fact that the inland waters were excluded by the terms of the litigation does not surrender the rights of the United States to them, unless and until the defendant State has proved they were conveyed to it by Act of Congress. That California does not believe they were so conveyed, is established by the Act of its own Legislature in 1929, Chapter 536, under which the State and its officials were prohibited from granting leases for the drilling of oil in "tidelands, submerged lands, overflow lands, beds of navigable rivers, and lakes." Had California any legitimate claim, this Act would not have been passed by its Legislature. (Amicus Curiae Brief filed September 3, 1947, Page 16.)

The foregoing paragraph refers particularly to subsection (b) of the proposed supplemental decree, which the Attorney General purported, by the stipulation of July 26, 1947, to disclaim to California, upon the theory that by creating a bay out of the open sea, he could dispose of the territory of the United States and the deposits of oil in his pencil-made bay as "inland waters."

A bay, as defined by Black's Law Dictionary "is an arm of the sea surrounded by land except at the entrance." In *United States* v. *Morel*, Fed. Cas. No. 15807, it is defined as "an opening into the land where the water is shut in on all sides except at the entrance." A map of the coast line of California, from Point Firman to Point La Jolla on the

South is hereto attached and marked Exhibit A, clearly demonstrates that the bay created by the Attorney General fails to meet the requirements of the definitions and demonstrates other things as well.

The fact that the great pool of oil is included by the line drawn by the Attorney General in the open sea may account for the creation of the bay, and the attempt by calling it "inland waters", to give the oil to California by the stipulation, the legality of which method, the Attorney General now seems to question, but hopes, by his petition for a supplemental decree, subsection (b), to buttress and make definite, by a decree of this Court.

There is no legal basis for this act of the Attorney General and he is without power or authority to make such an agreement and the stipulation is void and not binding upon the United States.

This Court, in the past, has handed down a number of opinions and decrees with reference to the ownership by various States of the "inland waters" in those States. However, these opinions and the decrees, so holding, in many instances, lack the essential legal basis to confirm a grant of title. No title can be acquired by any State admitted to the Union, under the Constitution, by judicial decree, or upon the basis or claim of State sovereignty, unless the "inland waters" have by specific Act of Congress been conveyed to the State. The State is restricted in its ownership of property, within its boundaries, by the grants of land made it by the Congress. Nothing passes by implication, (*MacDonald* v. *U. S.*, 119 Fed. (2) 821, 825) all opinions and decrees to the contrary notwithstanding. The failure of the Attorney General to include "inland waters" in the instant litigation does not, by its omission, transfer the "inland waters", not so granted, to defendant State.

This Court, in the case of *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100 at 122, states:

> "It is now settled in the United States and recognized elsewhere, that the territory subject to its juris-

diction include the land areas under its dominion and control, and ports, harbors, bays, and other enclosed arms of the sea along its coast to a marginal belt of the sea extending from the coast line oceanward a marine league, or three geographical miles."

The following statement is made on page 10 of the memorandum supporting the petition for a supplemental decree:

> "The United States has not surrendered, waived, or attempted to contract away any part of the areas or rights therein, under which it has dominion and paramount power under the decree of this Court, entered October 27, 1947, and nothing herein is intended to have any such effect."

The foregoing declaration, in the light of the stipulations made by the Attorney General with the State of California on July 26, 1947, and after the opinion of this Court was handed down on June 23, 1947, and subsection (b) in the proposed supplemental decree, is directly contrary to the facts and that declaration. In order to make this declaration true and in accord with the facts, it would have been and will be necessary for the Attorney General to notify this Court of the cancellation of the stipulations disclaiming San Pedro Bay and the elimination of subsection (b) from the proposed decree. But, this has not been done and notwithstanding the declaration above quoted, the Attorney General persists in his efforts on behalf of the State of California. Counsel for the Government, also, in his memorandum, on page 10, requests that California be called upon to answer this petition for a supplemental decree. "Why this request?", when this Court, has ruled that California has no interest in the territory or the oil. This request of the Attorney General must raise some questions, if not suspicions, in the minds of all as to what is afoot. Surely, this request is not in the interest of furthering the conclusions of this Court, but is further evidence of the adverse efforts of the Attorney General to do all he can, not

in the interests of the Government, but for the State of California.

During all the arguments before the Court and in the pleadings filed, the interests of California seemed to have weighed more heavily upon the mind of Counsel for the Government and the subject of greater concern, than the rights of the Government. Government Counsel has at all times sought to further and protect the interests of California, as for example the stipulation, heretofore referred to, by disclaiming the rights to the Government in territory and oil, held by this Court, to belong to the Government and subsection (b) of the proposed decree. The Attorney General has not yet disclosed to this Court the secret of his authority or power to disclaim the territory of the United States and its interest in the oil. He claims, according to newspaper reports, that he is a State's rights man. Is he by reason of this statement justified as the Attorney General to exert his efforts in favor of the claims of the State of California as against the rights of the Nation? Could it be the Attorney General is miscast in the role of defender of the Constitution and the rights of the people?

Your petitioner wonders if subsection (b) was placed between (a) and (c) in the hopes that the disclaiming of the interests of the United States, in the Attorney General's Bay of San Pedro, might pass unnoticed and that he might thus cause the Court, by oversight, to ratify and confirm his unlawful stipulation of July 26, 1947 (a copy of which is on file in this Court) by approving the proposed decree. The detailed arguments against the legality of the stipulations are set out in petitioner's brief, filed with this Court September 3, 1947, and will not be again set forth.

It would appear that it is the purpose of the Attorney General to select various and sundry segments of the coast line which he will submit to the Court for the purpose of securing supplemental decrees. It is respectfully sug-

gested that in view of the Court's decision regarding the rights of the Government in the marginal belt that a general and comprehensive delimitation based upon Government surveys might solve the question regarding the delimitation of the marginal belt and establish the boundary line between the three-mile marginal belt and the ordinary low-water mark. It is respectfully suggested that the following might be a solution:

For the purpose of demarcation of the boundary line between the three-mile marginal belt and the ordinary low-water mark on the coast of California, the boundary is established in conformity with the official maps and charts prepared by the United States' Surveyor General, together with the field notes thereof, during the years 1857 and continuing to and including the year 1874, as said maps, charts and field notes, appear in the records and Archives of the United States. (A copy of said map is hereto attached and marked Exhibit B.)

Your petitioner believes that the boundary line established by the Surveyor General of the United States, would be conclusive, and would obviate the necessity of any further petitions being filed to establish boundary lines.

Pursuant to the decree of October 27, 1947 with respect to the stipulations, your petitioner filed on February 6, 1948, in the United States District Court for the District of Columbia, a petition, asking that Court to set aside the stipulations as being beyond the scope of the powers and authority of the Attorney General and Secretary of the Interior to make, contrary to law, public policy and the opinion of this Honorable Court.

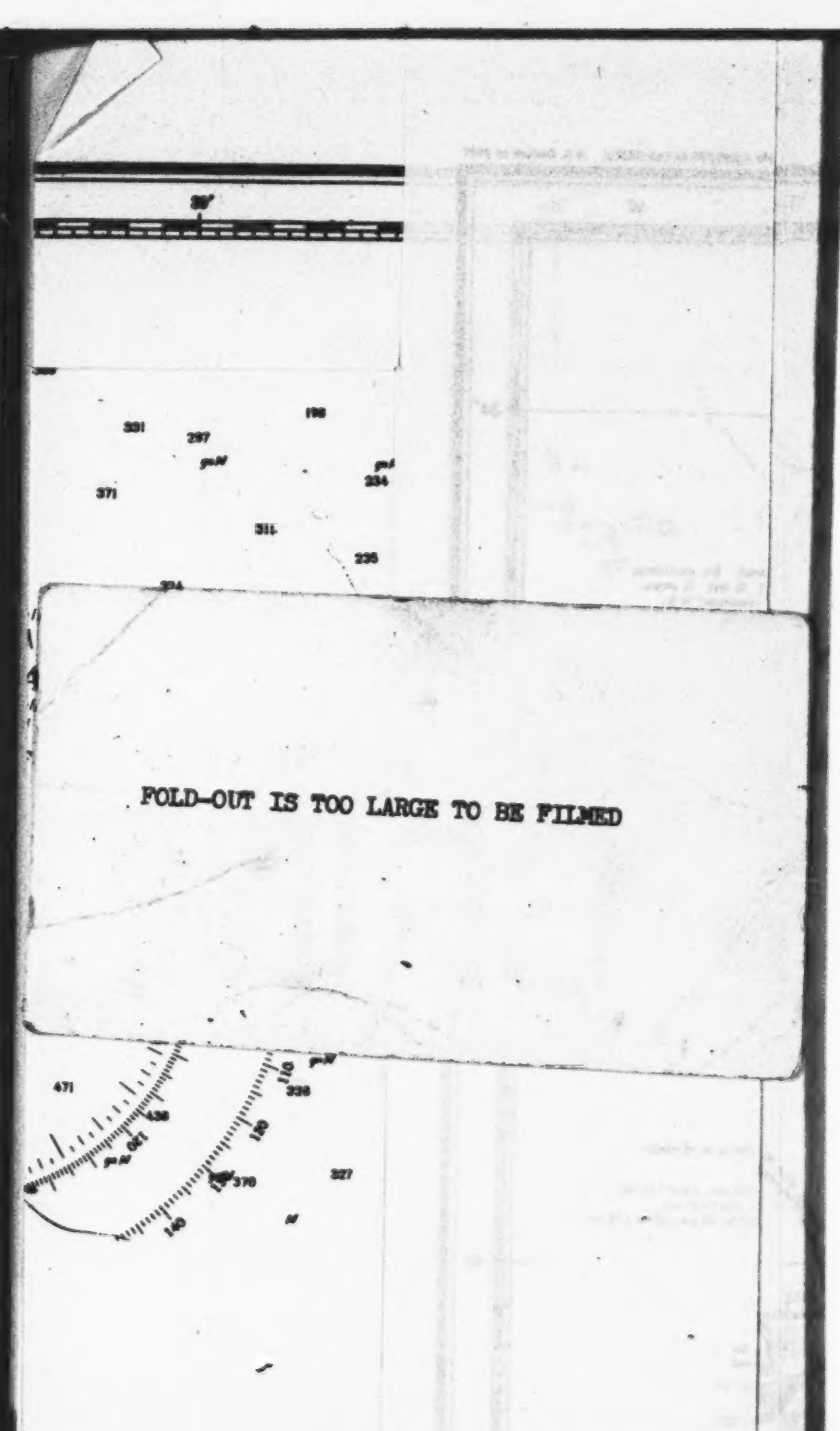
It is believed, from the standpoint of the facts and the law, the opinion and decree of this Court in the instant case, that the petition of the Attorney General for a supplemental decree, covering two segments of open sea and the

disclaimer to San Pedro Bay, is adverse to the interests of the United States, and should be denied.

Respectfully submitted,

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for
ROBERT E. LEE JORDAN,
815 15th Street N. W.
Washington 5, D. C.

February, 1948.


FOLD-OUT IS TOO LARGE TO BE FILMED

Rec'd with San Onofre Letter of May 14 1869 Petitioners Exhibit No 2

Fractional Township N° V South, Range N° XIII West San Bernardino Meridian

Part of Rancho San Pedro

Part of Rancho Los Cerritos

Part of Rancho Los Alamitos

Lot N° 37

Lot N° 40

Lot N° 38

Lot N° 39

Inner Bay of San Pedro

Terminal Island

Los Angeles River

OCEAN

Part of Rancho Los Palos Verdes

Sec 19

2.00 Acres

Lot 1 as deed many believed discovered by mean of the Resident Mar 15 1872 - see letter from Surv Dept Mar 22 1872 H 37 469

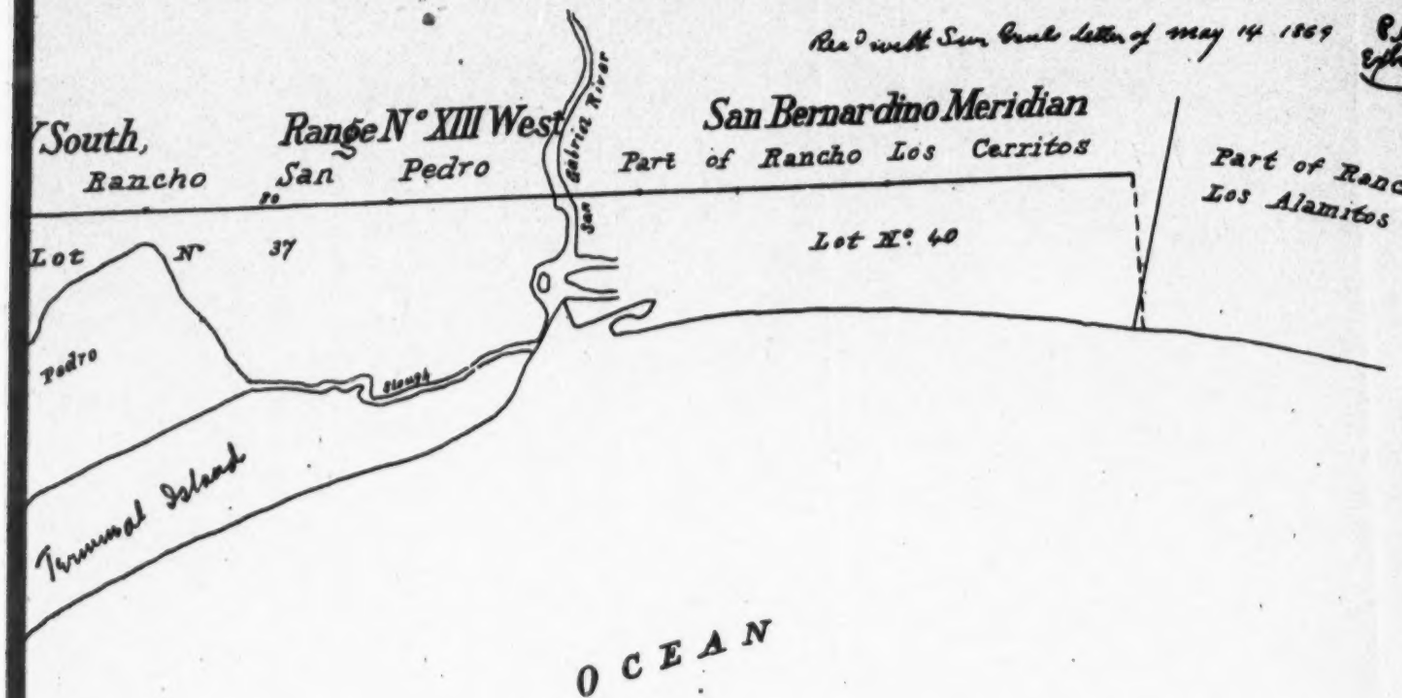
Aggregate Area of Public La

Estimated Area of Private Gra

Rec'd with San Pedro letter of May 14 1869

Petitioners Exhibit No 2

2 ff



Meanders of the Shore of Wood Man's Island

No	Course	Distance	No	Course	Distance
Beginning at Post XIII Miles along the Meanders of the Island at ordinary high Tide			5	N 26½ E	1.00
			6	N 26½ E	1.00
			7	N 50 E	0.50
1	S 32½ W	2.50	8	N 80 W	1.00
2	S 2½ W	4.00	9	North	3.00
3	S 32½ E	1.00	10	N 75 W	1.04
4	N 62 E	2.00	11	S 49½ W	0.63
		9.50			9.03
					9.50
				Aggregate	18.53 Chains

...Wood many Island ... by order of the Sur... Mar 15 1872 - See letter ... Surv. Mar 22 1872.

Aggregate Area of Public land 2.00 Acres

Estimated Area of Private Grants and Lower Bay of San Pedro 4,700.00 "

Aggregate 4,702.00 "

Surveys Designated.	By Whom Surveyed.	Date of Contract.	Amount of Surveys	When Surveyed
North boundary of Township	Henry Hancock	January 31st 1853		1853
West - - -	" "	February 18th 1855		1855
Boundaries of Rancho San Pedro	" "	Instructions December 11th 1857		1857
- - - Los Palos Verdes	" "	" September 1st 1859		1859
- - - Los Alamitos	" "	" September 1st 1858		1858
- - - Los Coritos	" "	" September 1st 1866		1866
Lines shaded red	G. H. Thompson	" September 1st 1868	1 Mile 17 Chs 17 Lks	1868
Meanders of shore of Broad Wang Island	" " "	" " " "	0 " 13 " 83 "	September 15th 1868

Magnetic Variation 16° 15' East.

The above Map of Fractional Township No 5 S
is strictly conformable to the field notes
examined and approved
Surveyor General's Office
San Francisco, California
September 25th 1868.

	By Whom Surveyed	Date of Contract	Amount of Surveys	When Surveyed
	Henry Hancock	January 31st 1853		1853
	" "	February 13th 1865		1865
	" "	Instructions December 11th 1857		1857
	" "	" September 1st 1859		1859
	" "	" September 1st 1858		1858
	" "	" September 1st 1866		1866
	G. N. Thompson	" September 1st 1868	1 Mile 17 Chs 17 Lks	1868
	" " "	" " " "	0 " 18 " 88 "	September 15th 1868

Magnetic Variation 14° 15' East.

The above Map of Fractional Township N° 5 South, Range N° 13 West of San Bernardino Meridian is strictly conformable to the field notes of the Survey thereof on file in this Office which have been examined and approved

Surveyor General's Office
San Francisco, California
September 26th 1868.

Sherman Day
Surv. Gen. Cal.

FILE COPY

NOV 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. [redacted]6 —Original

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION OF ROBERT E. LEE JORDAN AS AMICUS CURIAE TO SUBMIT FOR THE CONSIDERATION OF THE COURT, CERTAIN ADDITIONS TO THE FINAL DECREE ENTERED IN THE ABOVE ENTITLED ACTION.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for ROBERT E. LEE JORDAN,
815 15th Street, N. W.,
Washington 5, D. C.

Of Counsel:
T. S. HOGAN.

November, 1947.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 12—Original

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

PETITION OF ROBERT E. LEE JORDAN AS AMICUS CURIAE TO SUBMIT FOR THE CONSIDERATION OF THE COURT, CERTAIN ADDITIONS TO THE FINAL DECREE ENTERED IN THE ABOVE ENTITLED ACTION.

Robert E. Lee Jordan, as Amicus Curiae, asks leave to submit for the consideration of this Honorable Court, for the purpose of carrying into effect the conclusions of this Court as stated in its opinion of June 23, 1947, certain additions to the final decree which will clarify the decree and prevent almost certain litigation.

It is respectfully suggested, that in Paragraph 1. of the final decree, that in the second line of the said paragraph, and after the words "and has been at all times pertinent hereto," the words "the ownership of and" be added, which will make this portion of the decree read as follows:

> "The United States of America is now, and has been at all times pertinent hereto, the owner of and possessed of paramount rights in, * * *"

It is also respectfully suggested that there be added to the final decree, the following Paragraphs, Nos. 4 and 5:

Paragraph 4.

4. This title and these rights of the United States in these lands were acquired at the time of and through the Treaty of Guadaloupe Hidalgo with Mexico in 1848, and thereafter said lands were, and now are, subject to the general and special laws adopted by the Congress of the United States for the purpose of providing a method by which the United States through its citizens could utilize and protect the mineral resources in land owned by the United States.

Paragraph 5.

5. For the purpose of demarcation of the boundary line between the three-mile marginal belt and the ordinary low-water mark on the coast of California, the boundary is established in conformity with the official maps and charts prepared by the United States' Surveyor General, together with the field notes thereof, during the years 1857 and continuing to and including the year 1874, as said maps, charts, and field notes, appear in the records and Archives of the United States.

Amicus Curiae believes the foregoing paragraphs will dispose of many vexing questions regarding the submerged lands, the minerals in them, and the rights of the Government, and that in the interests of an early adjustment of the points in dispute, the foregoing additions to the decree would settle most of the points which have arisen since the issuance of said final decree.

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for Petitioner,
ROBERT E. LEE JORDAN.

Copies of the attached petition have been delivered to Counsel for the Government and the State of California.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 12—Original

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA.

MEMORANDUM BRIEF OF ROBERT E. LEE JORDAN, AS AMICUS CURIAE, IN SUPPORT OF PETITION.

Your petitioner respectfully submits for the consideration of this Court, the foregoing proposed additions to the decree issued in this case on October 27, 1947, upon the grounds that "jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree."

The proposed addition to Paragraph 1. of the decree would constitute a positive declaration of title in the United States.

While such ownership is implied in the language of the decree, controversies are already arising between the interested parties as to whether or not there is a limitation on the ownership of the surface of the three-mile strip covered by the decree. The value of the minerals would be

greatly reduced to some areas and totally destroyed if a cloud remains on the title to the surface.

Despite the technical developments in the proces of slant-drilling, only a small part of these lands can be developed for oil and gas production without ownership of the surface. Even where slant-drilling is possible, the United States and its citizens would be at the mercy of the abutting landowners in the production, storage and transportation of the oil and gas. For this and other reasons a multiplicity of lawsuits would arise to the great detriment of the United States.

In some areas the building up of small islands, where the water is shallow, will prove to be the most feasible method of oil operations. In such cases, surface ownership must vest in the owner of the minerals.

Ownership is also implied by the terms of the decree by virtue of the injunctive relief granted, which presupposes that unless there is title in the property, no such relief could be granted, and the additions suggested would fully set out the absolute rights of the Government in accordance with the conclusions of the Court.

The decree asserts "The State of California has no title thereto or property interests therein." The title must therefore rest in the United States, unless some claim of international ownership is recognized by this Court. The character of this property, and vitally important circumstances, connected therewith are too well known to the Court to require comment, but they do make it imperative that the ownership be stated with the utmost clarity and beyond room for controversy from any source.

We respectfully contend that it is of the utmost importance that this proposed Paragraph 4. be added by way of clarification to the decree. Unless such a provision is included in the decree, the United States will be in the possession of a tremendously valuable property and without any method by which its vast resources can be protected from the present rapid depletion by adverse parties. The nation, itself, is not equipped to engage in oil production.

After years of consideration and much vigorous discussion of other proposed methods of disposing of or otherwise utilizing the mineral resources of the nation, the Congress adopted the original Mining Laws. These Laws were predicated on the accepted theory that the best results could be obtained by permitting the individual citizen to enter said lands under the terms contained in the Mining Laws, and thereafter developing said mineral resources for his own use. It was anticipated, and later proved to be correct, that this method would hasten the development of the Western Territories and resulted in the building of camps, towns, and cities, and ultimately the inauguration of new States. The growth of the West, which can be directly attributed to these Mining Laws, is one of the great epics of American History.

The adoption, by Congress, of the Oil and Gas Leasing Law in 1920, was but an extension, with certain limitations, of the original Mining Laws. The fundamentals remained, including the right of the qualified citizen who was first in time in making his application to enter and develop mineral lands owned by the United States. Entries had theretofore been made on potential oil lands as Placer Claims under the Mining Law, but strict compliance with the law was impossible, as the law called for a discovery of mineral before filing. This was impossible in the case of oil or gas, but even so, the Courts held that the citizens who filed the first applications had a right of possession as against all other claimants. Serious and often violent conflicts arose between conflicting claimants and development of potential oil lands was greatly delayed.

Oilmen and other citizens who were familiar with the conditions appealed to Congress to adopt legislation to remedy the situation. The Oil and Gas Leasing Act was the outcome. (U. S. C. A. Title 30 § 181 et seq.)

The only important modification of the original Mining Law was the retention by the United States of a substantial royalty in all oil and gas produced in leases issued to

the applicants. The Congress had no intention or desire to inject the nation into prospecting for oil or other minerals and assume the hazards thereof. It still has no such intentions.

These laws are in full force and effect, and applicable to all land owned by the United States, except those areas expressly exempted therefrom by provisions of the Oil and Gas Leasing Law. These exemptions do not extend to the three-mile marginal strip off the coast of California.

It seems presumptious to the point of impertinence for the Attorney General and the Secretary of the Interior to suggest to this Court that it delay the effectiveness of its decree until the Congress has time enough to presumably give away this tremendously valuable property. In the meantime, the pillaging of the property continues. Neither have they any right to assume that the Congress is going to enact legislation to deprive all of the citizens of the United States of their property.

Apparently these officials are laboring under the illusion that Congress has power to enact some retroactive laws which will deprive citizens of rights acquired in the past under existing laws.

It is a matter of common knowledge, of which this Court should take judicial notice, that the initiation of this action which resulted in the opinion of June 23, 1947, was due to thirteen years of persistent efforts by qualified citizens of the United States to have their rights as such citizens recognized by the Department of the Interior and the Department of Justice. The fact is abundantly established in the official records of those Departments. Under the laws of the United States, these citizens were entitled to enter the undeveloped oil lands owned by the United States.

Every trespasser on the lands covered by this case entered said lands with full knowledge of the recorded claims of these citizens who filed their location notices thereon and claimed the right to develop the same for themselves and for the United States. There was, and there still is, no other method authorized by the Congress of the United

States by which the said lands could be developed and the United States derive therefrom the oil royalties to which it was entitled.

The loss suffered by the United States through the stubborn persistence of executive officers in refusing to protect its rights by granting the permits and leases applied for, amounts to many millions of dollars. Unlawful slant-drilling of oil wells from adjacent uplands, some of which were started on lands as much as a half-mile distance from the three-mile strip, is conceded even by the defendants in this case and to have thus extracted from this strip more than one hundred million barrels of oil, and the United States received none of the royalties to which it was entitled.

The amazing stipulations recently entered into by the Attorney General and the Secretary of the Interior, and which the Attorney General asks this Honorable Court to condone and approve, and which he publicly asserts are still in effect, despite the Court's rejection thereof, are designed to permit and encourage the continuance of this wholly unlawful extraction of oil from the property of the United States. More than once this Court has stated in its decisions that it is the duty of executive and ministerial officers of the United States to protect the interests of the Government and its property, and that there is no active duty devolving on such officers to expend their efforts on behalf of any State or other claimants against the Government. See *West* v. *Standard Oil Co.*, 278 U. S. 200; *Shaw* v. *Kellogg*, 170 U. S. 312, 337-338.

Your petitioner is not unmindful of the fact that in your decree you suggest action in the District Court as a procedure by which the rights and equities of aggrieved parties can be determined. We very respectfully assert that there are two insurmountable objections to that course: 1. That the relief sought by these proposed amendments is beyond the power of the District Court to grant; 2. That the delays incident to such a procedure will result in the dissipation and exhaustion of the estate which is the subject of the liti-

gation and a verdict for the plaintiffs would be but an empty victory.

Powerful financial entities whose interest herein are adverse to those of the United States can and will exhaust every effort to prolong any action in the District Court. We are well aware that in the unlawful stipulation which purports to authorize the continued trespass by these parties on these premises, there is a provision for impounding oil royalties which may later be paid to the United States. At best, such a provision is only a fractional protection to the United States. There will be no recovery of the great incidental values which the trespassers will derive, and of which the United States will be deprived by reason of this stipulation. There is a further reason why these stipulations should be immediately voided. It is a matter of general knowledge in California and throughout all oil producing States that in addition to the financially responsible major oil companies which have been producing from these lands, millions of barrels of oil have been withdrawn therefrom by parties who slant-drilled under these lands without a shadow of legal right, or even under an alleged lease from the State.

We cannot too urgently impress upon the Court the fact that unless the Decree authorizes the United States and its citizens to proceed under the only method available to it and them, to-wit, the Oil and Gas Leasing Law, this tremendously valuable estate will be dissipated and lost while litigation still pends.

Proposed Paragraph 4. is the simple, effective, and conclusive answer.

It will not cause one day's delay in the production of oil from these lands, as at all times the applicants of Federal permits and leases have been ready and willing to arrange with present operators for the continued flow of the wells.

The proposed Paragraph 5. will greatly simplify the establishment of the landward boundary of the marginal three-mile strip as well as determine the vexing question of inland waters. There can be no argument but what that

boundry is the one which existed at the time these lands were acquired by the Treaty with Mexico. Subsequent man-made changes by the construction of harbors, fills over tide and submerged lands in the mean lowtide line, cannot affect the ownership status of these lands. In the records of the Surveyor General's Office, and of the U. S. Geodetic Survey, and in the Archives of the nation, the proof is readily available. *Patton* v. *City of Los Angeles,* 169 Cal. 521.

In the oilfields on this strip, which are already in production, the establishment of this lowtide line is already well known or can be quickly determined.

The major oil companies, knowing that the title of the grantee in their leases was doubtful at best, naturally would have their engineers chart the location of this line. Agencies of the Federal and State Governments have also charted this lowtide line.

It is in these producing oilfields that urgency for action exists. In other areas, the time element is not so important.

The inclusion of Paragraph 5. in the decree will settle many issues which would otherwise result in endless litigation.

Respectfully submitted,

JAMES E. WATSON,
ORIN DEMOTTE WALKER,
Counsel for ROBERT E. LEE JORDAN,
815 15th Street, N. W.,
Washington 5, D. C.

November, 1947.